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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,543

02/18/2004

Agur Junge

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3273

21324 7590 09/05/2008
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EXAMINER

VU, QUYNH-NHU HOANG

ART UNIT

PAPER NUMBER

3763

NOTIFICATION DATE

DELIVERY MODE

09/05/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
akron-docket@hotmail.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/782,543	Applicant(s) JUNGE, AGUR	
	Examiner QUYNH-NHU H. VU	Art Unit 3763	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07/25/08 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See con't sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Quynh-Nhu H. Vu
Examiner
Art Unit: 3763

Con't of 11.

Applicant combined the dependent claims of 13-15 into independent claim 1 with the limitation "a single piece of a silicone rubber with a Shore hardness greater than 30" (Remarks/Arguments filed on 7/25/08). However, the Prior Arts still read upon the claimed invention. Based on the changes of the Remark filed on 7/25/08, the update rejection as following

Claims 1-10, 12-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guy et al. (US 5,334,164) in view of Stevens et al. (US 5,935,112).

Regarding claims 1 and 21, Guy discloses a variable interior dimension cannula valve, however, it can be used as an insertion catheter, since insertion catheter are usually includes an elongate flexible tube. The device comprising: sealing element 7; a tubular main body 9 of an elastic material (col. 6, lines 63-68), a peripheral wall of the main body enclosing a hollow space that extends along a longitudinal direction of the sealing element with a connecting passage 32 for fluids; wherein the peripheral wall in the region of the connecting passage is designed in respect of elasticity of the material, thickness of the wall and inside diameter of the hollow space, such that twisting the main body causes a constriction (at 32) of hollow space in the region of the connecting passage in such a way that the constriction is at predetermined position in relation to the longitudinal direction of the sealing element (see Fig. 6-7). Examiner is taking position that if the more twisting of the body of 9, the diameter of hollow space will be reducing and the longitudinal is shorter also.

Guy in view Stevens disclose the claimed invention except for that the tubular main body comprises a material with Shore hardness greater 30.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a tubular main body with a material of Shore hardness greater than 30, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.